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No. 90-1102

In The

Supreme Court of the United States

October Term, 1990

ROBERT E. GIBSON,

Petitioner,

v.

THE FLORIDA BAR, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER

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IDENTITY OF AMICUS

Pursuant to Supreme Court Rule 37, Pacific Legal Foundation (PLF) respectfully submits this brief amicus curiae in support of petitioner Robert E. Gibson. Written consent to the filing of this brief has been granted by counsel for all parties. Copies of the letters of consent have been lodged with the Clerk of this Court.

PLF is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose

of engaging in litigation in matters affecting the public interest. Policy is set by a Board of Trustees composed of concerned citizens, the majority of whom are attorneys. PLF's Board evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community. PLF's Board has authorized the filing of an amicus curiae brief in this matter.

PLF is submitting this brief because it believes its public policy perspective and litigation experience in the compelled dues arena (be they agency shop or state bar) will provide an additional viewpoint with respect to the issues presented. PLF has participated in numerous cases before this Court including amicus curiae participation in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). Recently, PLF attorneys represented the petitioners in *Keller v. State Bar of California*, 495 U.S. ___, 110 L. Ed. 2d 1 (1990) (limiting the integrated bar's ability to spend objecting member's dues for political activities). Additionally PLF attorneys represented the petitioner in *Cumero v. Public Employment Relations Board*, 49 Cal. 3d 575 (1989) (limiting the use of an objecting nonmember's fee to those activities statutorily authorized in California's Educational Employment Relations Act). PLF believes the Eleventh Circuit court's opinion incorrectly analyzed the holdings of this Court which protect an individual's freedom of association and anonymity, resulting in objectors to the bar's political and ideological expenditures being forced to choose between their First Amendment right to object to nonchargeable expenditures by the bar and their First Amendment right to remain anonymous in their associations and political beliefs.

OPINION BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at *Gibson v. Florida Bar*, 906 F.2d 624 (11th Cir. 1990). The court held, *inter alia*, that the Florida Bar was not required to provide advance notice or reduction of dues for the proportion of dues that the bar knew would be used for political or ideological activities; that objecting members of the bar could be required to object on a particularized basis to each legislative policy with which they disagree; and that petitioner Gibson was not entitled to a refund of improperly collected dues.

REASONS FOR GRANTING THE WRIT

Supreme Court Rule 10.1 lists among the considerations governing review on certiorari the circumstance when a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort, as to call for an exercise of this Court's power of supervision. Rule 10.1(c) includes as a ground for review when a state court or United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court. All three of these grounds for review are present in this case.

I

THE DECISION IS IN CONFLICT WITH THE DECISIONS OF OTHER UNITED STATES COURTS OF APPEALS

The Eleventh Circuit Court of Appeals decision is flawed in many respects, but the most egregious defect is that the court held as constitutional the Florida Bar's procedure which required members to object to each particular legislative policy with which they disagree. The particularized objection procedure violates the objector's freedom of anonymous association by forcing the objector to announce beliefs unpopular with the leadership of the bar. Here, then, the price of exercising one's First Amendment right to object to expenditures of compelled dues for political or ideological activities is the relinquishing of one's First Amendment right to remain anonymous in one's beliefs.

Virtually every Circuit Court of Appeals has expressly followed the Supreme Court's holdings in *National Association for the Advancement of Colored People v. Alabama* (*N.A.A.C.P.*), 357 U.S. 449 (1958), and *Bates v. Little Rock*, 361 U.S. 516 (1960). These cases firmly espoused the principle that the right to refrain from disclosing one's beliefs or membership in an organization is a necessary and fundamental corollary to the freedom of association. This Court in *N.A.A.C.P.* stated that

> "on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these

> circumstances, we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure." *N.A.A.C.P.*, 357 U.S. at 462-63.

Furthermore, in *Bates*, this Court elaborated on the freedoms at stake:

> "Like freedom of speech and a free press, the right of peaceable assembly was considered by the Framers of our Constitution to lie at the foundation of a government based upon the consent of an informed citizenry—a government dedicated to the establishment of justice and the preservation of liberty. And it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States.
>
> "Freedoms such as these are protected not only against heavy-handed frontal attack, *but also from being stifled by more subtle governmental interference*. 'It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of association. . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a

> group espouses dissident beliefs.' " *Bates*, 360 U.S. at 522-23 (quoting *National Association for the Advancement of Colored People v. Alabama*, 357 U.S. at 462) (emphasis added; citations omitted).

Beginning with *N.A.A.C.P.*, this Court recognized the importance of protecting anonymous political activity and has repeatedly reaffirmed that the Constitution protects against compelled disclosure of political associations and beliefs. *See National Association for the Advancement of Colored People v. Button*, 371 U.S. 415, 437 (1963) (state had no compelling interest in regulating the legal profession as would justify a statutory effort to obtain information to aid the enforcement of certain regulations) and *Shelton v. Tucker*, 364 U.S. 479, 490 (1960) (statute held unconstitutional which undertook to compel every teacher, as a condition of employment in a state-supported school or college, to file annually an affidavit listing any organizations to which he or she might belong).

Because "compelled disclosure of affiliation with groups engaged in advocacy" may infringe First Amendment rights, *Buckley v. Valeo*, 424 U.S. 1, 64 (1976), disclosure laws that significantly encroach First Amendment rights must survive exacting scrutiny, and the state must establish a relevant correlation or substantial relation between the governmental interest and the information sought through disclosure. *Id.* at 64-65. Strict scrutiny is required even if the infringement on First Amendment rights arises "not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." *Id.* at 65.

This Court, while recognizing the careful scrutiny and balancing of constitutional rights that must inhere in every First Amendment case, has taken a very practical approach to analyzing the "chill" factor resulting from public disclosure of individuals' private beliefs and associations. A factual record of past harassment is not the only situation in which courts have upheld a First Amendment right of nondisclosure. The underlying inquiry must be whether a compelling governmental interest justifies governmental action that has "the practical effect 'of discouraging' the exercise of constitutionally protected political rights," *N.A.A.C.P.*, 357 U.S. at 461. This practical effect may take the form of "an unintended but inevitable result of the government's conduct in requiring disclosure." *Buckley v. Valeo*, 424 U.S. at 65. Thus, in *Pollard v. Roberts*, 283 F. Supp. 248, 258 (E.D. Ark.), *aff'd per curiam*, 393 U.S. 14 (1968), although there was no evidence of past reprisals against contributors to the petitioner Republican Party of Arkansas, this Court held that it would be naive not to recognize that disclosure would impermissibly discourage the exercise of constitutional rights given the unpopularity of the Republican Party at that time.

In *Shelton v. Tucker*, 364 U.S. at 486, this Court struck down a state law requiring Arkansas teachers to disclose all organizations to which they belonged. As in *Pollard*, this Court took a commonsense approach and recognized that a chilling effect was inevitable if teachers who served at the absolute will of school boards had to disclose to the government all organizations to which they belonged. "[T]he pressure upon a teacher to avoid any ties which

might displease those who control his professional destiny would be constant and heavy." *Id.*

Similarly, in this case, each member of the bar is *required* to belong to that organization, and the leadership of the bar has the capability of greatly affecting a member's career and livelihood. A member may have valid reasons for not wanting the bar to know that he opposes their policies. Yet under the Florida Bar procedures, such a member must either publicly declare his dissent to each particular policy he opposes or surrender his First Amendment right not to support views he does not share.

The Circuit Courts are bound to follow these Supreme Court opinions, and by and large, they have done so. The Eleventh Circuit *Gibson* decision directly contravenes the overwhelming case law from the Supreme Court, the other circuit courts, and, in fact, its own precedential Eleventh Circuit rulings. As an example of the Eleventh Circuit's disregard of its own precedents, in *In re Grand Jury Proceeding*, 842 F.2d 1229, 1235 (11th Cir. 1988), the court analyzed *N.A.A.C.P.* in the context of quashing an order demanding membership lists of the National Commodity and Barter Association (NCBA), noting that "[g]overnmental regulation of the unprotected activities of these groups may well impinge on the protected activities. Revealing the names of the persons who participated in NCBA's commercial activities, for example, could also reveal the names of adherents to NCBA's ideology." The court then upheld the First Amendment rights of NCBA members.

The Sixth Circuit addressed the *N.A.A.C.P* line of cases in *Marshall v. Bramer*, 828 F.2d 355 (6th Cir. 1987).

That case, in which the plaintiff sought to protect the membership list of the local Ku Klux Klan, followed the rules of those cases, and noted strict scrutiny applies:

> " '[I]t is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show *a substantial relation between the information sought and a subject of overriding and compelling state interest*. Absent such a relation between the NAACP and conduct in which the State may have a compelling regulatory concern, the Committee has not "demonstrated so cogent an interest in obtaining and making public" the membership information sought to be obtained as to "justify the substantial abridgment of associational freedom which such disclosures will effect." ' " *Id.* at 359 (emphasis in original) (citing *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 546 (1963)).

Protection of the freedom of anonymous association is necessary to preserve individual liberties, to increase the dissemination of diverse viewpoints, and to promote the structural goal of wide political participation. As the Ninth Circuit observed:

> "The right of those expressing political, religious, social or economic views to maintain their anonymity is historic, fundamental, and all too often necessary. The advocacy of unpopular causes may lead to reprisals—not only by government, but by employers, colleagues, or society in general. While many who express their views may be willing to accept these consequences, others not so brave or not so free to do so will be discouraged from engaging in public advocacy." *Rosen v. Port of Portland*, 641 F.2d 1243, 1251 (9th Cir. 1981).

In *Rosen*, an ordinance requiring disclosure of members of a group desiring to distribute literature in a public forum was struck down as violative of the freedom of association and the correlative right to anonymity. The Circuit Court maintained that because the "expression of dissident or 'unsettling' views, by its very nature, invites retaliation and oppression, the identification requirement of the ordinance presents substantial dangers of 'chill and harassment.' " *Id.*

The Ninth Circuit demonstrated the continuing vitality of the freedom of anonymous association rights six years later in *Fleisher v. City of Signal Hill*, 829 F.2d 1491 (9th Cir. 1987), in which the court recognized that compelled disclosure of members' names would restrict the members' right to associate freely and thus to engage in the expressive activities protected by the First Amendment. The court followed *N.A.A.C.P.* in holding that because of " 'the vital relationship between freedom to associate and privacy in one's association,' " the members were entitled to opt for anonymity. *Id.* at 1496.

The Tenth Circuit has also upheld the rights of individuals to keep their associations and beliefs private. The court held that " '[o]ffensive to the sensibilities of private citizens, identification requirements . . . even in their least intrusive form, must discourage . . . participation [in the preservation and strength of the democratic ideal].' " *Wilson v. Stocker*, 819 F.2d 943, 949 (10th Cir. 1987) (citation omitted). The Tenth Circuit also accepted the petitioners' argument in *In re First National Bank, Englewood, Colorado*, 701 F.2d 115, 117 (10th Cir. 1983), holding that the compelled disclosure of membership identities, which would be the inevitable result of unsealing the records

and transferring them to the grand jury, would chill the rights of the organization members to freedom of association guaranteed by the First Amendment.

The Fifth Circuit has emphasized that individuals with freedom of anonymous association claims need not prove past harassment to succeed on their claim. In *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980), the ordinance at issue was declared unconstitutional even though it did not deter speech and association so much by the exposure of individuals' beliefs to public observation, as by the *threat* of exposure to public opprobrium and recrimination. *Familias Unidas*, 619 F.2d at 402. "The public opprobrium, reprisals, and threats of reprisals that attend the airing of one's affiliation with an unpopular cause . . . are substantial disincentives to engaging in such affiliations." *Familias Unidas v. Briscoe*, 619 F.2d at 399. Disclosure in that case, as in this one, occurred only *after* members of the organization differentiated themselves as supporters of particular conduct.

The D.C. Circuit addressed the practical nature of the court's review of the chilling effect:

> "In seeking to identify the chilling effect of a statute our ultimate concern is not so much with what government officials will actually do, but with how reasonable broadcasters will perceive regulation, and with the likelihood they will censor themselves to avoid official pressure and regulation." *Community-Service Broadcasting of Mid-America, Inc. v. Federal Communications Commission*, 593 F.2d 1102, 1116 (D.C. Cir. 1978).

In *Community-Service Broadcasting*, the court could not specify with any degree of certainty the precise quantity

of chill which is or will be produced by the statute at issue in that case. The court said:

> "Chilling effect is, by its very nature, difficult to establish in concrete and quantitative terms; the absence of any direct actions against individuals assertedly subject to a chill can be viewed as much as proof of the success of the chill as of evidence of the absence of any need for concern. . . . The absence of . . . concrete evidence [of harassment] does not mandate dismissal of the claim out of hand; rather, it is the task of the court to evaluate the likelihood of any chilling effect, and to determine whether the risk involved is justified in light of the purposes served by the statute." 593 F.2d at 1118.

The Second Circuit followed the lead of the D.C. Circuit, holding that "[w]hether that chilling effect is an unconstitutional impairment of non-disclosure rights depends on an assessment of the weight of the asserted governmental interest and the degree of impairment of protected rights." *Local 1814, International Longshoremen's Association, AFL-CIO v. Waterfront Commission of New York Harbor*, 667 F.2d 267, 272 (2d Cir. 1981). In that case, the court emphasized that "it is appropriate in determining whether the governmental interest justifies the inevitable chilling effect of some disclosures to assess whether the disclosures will impact a group properly limited in number in light of the governmental objective to be achieved." *Id.* at 273.

Here, the Eleventh Circuit has totally disregarded the adverse effect resulting to objecting members from particularized objection. Because they fear reprisals, members will not be inclined to exercise their First Amendment

right to object to the bar's political expenditures. Furthermore, because such a minor amount of money is attached to each particular piece of legislation, the average member will likely find particularized objections too burdensome. Those members with very strong political beliefs will not necessarily be deterred by the burden of objecting, but they then run the risk of retaliation from the bar for their unorthodox views.

In *Schneider v. Colegio de Abogados de Puerto Rico*, 917 F.2d 620 (1st Cir. 1990), the First Circuit held that the "primary feature of a constitutional system is that dissenters be able to trigger refunds by means of general objections so that they need not make public their views on specific issues." *Id.* at 635. The Eleventh Circuit summarily disposed of this issue without analysis, accepting the Florida Bar's absurd argument that registering dissent does not reveal one's position. *Gibson*, 906 F.2d at 632. This Court specifically held otherwise in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). In striking down the Puerto Rico Bar's particularized objection procedure, the *Schneider* court relied on *Abood*, in which this Court stated that a dissenter must not be required to make particularized objections because this "would confront an individual . . . with the dilemma of relinquishing either his right to withhold his support of ideological causes to which he objects or his freedom to maintain his own beliefs without public disclosure." *Abood*, 431 U.S. at 241; *Schneider*, 917 F.2d at 627.

The law on the burden of proof issue, which relates to the particularized objection issue, clearly amasses in Gibson's favor. The nonmembers' complaint in *Brotherhood of Railway and Steamship Clerks, Freight Handlers,*

Express and Station Employes v. Allen, 373 U.S. 113 (1963), alleged that sums exacted by the union " 'have been and are and will be regularly and continually used by the defendant Unions to carry on, finance and pay for political activities directly at cross-purposes with the free will and choice of the plaintiffs.' " This allegation was held sufficient to state a cause of action. *Allen*, 373 U.S. at 118. It would be impracticable to require objectors to allege and prove each distinct political expenditure to which they object; it is enough to manifest opposition to *any* political expenditures by the union. *Id.*

II

THE DECISION IS IN CONFLICT WITH THE DECISIONS OF CERTAIN STATE SUPREME COURTS

Virginia's highest court addressed freedom of association in *N.A.A.C.P. Legal Defense and Educational Fund, Inc. v. Committee on Offenses Against the Administration of Justice*, 204 Va. 693 (1963). In that case, plaintiffs sought to quash a discovery order that would require production of membership lists. The court noted that there

> "is ample uncontroverted testimony in the record . . . to show that many persons fear a disclosure of their names as associates or supporters of appellants' activities will bring upon them harassment, intimidation, enmity and social and economic reprisal. This is evidenced by anonymous contributions made to avoid the threatened hostility of other persons in their community. . . . One would have to be deeply insensible to the affairs of present day life, or a modern Rip Van Winkle, to fail to observe the

> opposition . . . to the activities of the NAACP and its affiliates." *Id.* at 697-98.

The court held that disclosure of the names of N.A.A.C.P. supporters violated the freedom of association, *id.* at 698, concluding that while the state may conduct legislative investigations to protect its legitimate interests, Virginia exceeded its power by intruding into an area of constitutionally protected right of freedom and privacy of association. The state was held to have failed to show such an overriding and compelling state interest as to justify substantial abridgment of associational freedoms, which disclosure of names of donors to appellants' activities would effect. *Id.* at 702.

In *Britt v. Superior Court*, 20 Cal. 3d 844 (1978), the California Supreme Court addressed the issue of whether one must espouse an *unpopular* cause to be protected by the First Amendment freedom of association. The answer is no. Constitutional protection is afforded to the privacy interests of members of *all* politically oriented associations. *Id.* at 854.

In that case, the defendant port district did not contest the constitutionally sanctioned nature of such associational activities, but instead argued initially that because the discovery order at issue does not prohibit the exercise of any such activities but merely requires their disclosure, the order is not vulnerable to constitutional attack. The California Supreme Court rejected that argument, reiterating the Supreme Court mandate that freedom of association is protected " 'not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference.' " *Id.* at 852 (quoting *Bates v. Little Rock*, 361 U.S. at 523). The court noted that

even adherence to a cause that finds general support could nonetheless "raise the ire of municipal authorities or other individuals or business entities" who have interests contrary to the position espoused. *Britt*, 20 Cal. 3d at 854.

One of the principal purposes of the constitutional protection of anonymous association is to free an individual to follow his conscience by ensuring that he need not " 'avoid any ties [simply because they] might displease those who control his [personal or] professional destiny . . . . ' " *Id.* at 854-55. The source of the constitutional protection of associational privacy is the recognition that, as a practical matter, compelled disclosure will often deter such constitutionally protected activities as potently as direct prohibition. *Id.* at 857.

The decision of the Eleventh Circuit Court of Appeals stands in direct conflict with those decisions and this Court should grant review to resolve that conflict.

III

THIS CASE INVOLVES IMPORTANT ISSUES OF LAW THAT SHOULD BE RESOLVED BY THIS COURT

The importance of this case is found both in the breadth of its impact and the nature of the issues raised. At a minimum, the outcome of this case impacts on the entire mandatory membership of the State Bar of Florida. Further, the outcome will impact the many other states that have chosen to regulate the legal profession through an integrated bar association.

Anonymity is essential to uninhibited political activity in a democratic society. Confidentiality prevents the fear of reprisal that threatens to suppress the vigorous interchange of ideas at the core of the First Amendment's guarantee of free speech and association. American society is based on special indulgence to nurture the free expression of minority views. Because mere identification with certain disfavored ideologies can result in harassment which may silence those voices, the Constitution protects private support of political associations. *Federal Election Commission v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416, 417 (2d Cir. 1982).

The power of a government to repress dissent is substantial and can be exercised in myriad subtle ways. Anonymity is an essential element of freedom of association and the ability to express dissent effectively. As a result, removing the cloak of anonymity from those who object to the political and ideological stands taken by the Florida Bar threatens important First Amendment values. Such forced disclosure could likely lead to repercussions which consequently instill in the public the fear of becoming linked with the unpopular or the unorthodox, and of suffering socially or economically because of that linkage.

This Court in *Hudson* described one remedial means to protect objectors' constitutional rights. The *Hudson* procedures are to be construed as the *minimum* requirements. *Hudson*, 475 U.S. at 310. Through *Hudson* and *Keller*, unions and integrated bars were encouraged to experiment with procedures to achieve the least infringement on objectors' constitutional rights while still allowing the organization access to funds to which it is

entitled. New procedures have been implemented by organizations all over the country since the *Hudson* decision, and met in the courts with varying success. The procedure at issue does not meet the minimum requirements of *Hudson*, nor does it attain the substantive goals set forth in *Keller*. The procedural deficiencies are such that objectors to the Florida Bar's political and ideological expenditures cannot protect their First Amendment rights. The bar does not permit advance reduction of dues, does not provide precollection notice of the amount of nonchargeable dues, and requires issue-by-issue objections over the course of the year. The bar's procedure is not only cumbersome, but designed to discourage all but the most zealous objector.

Perhaps the most significant indicator of the importance of the issues presented in this case is the fact that this Court has, on a prior occasion, indicated a desire to review these legal questions. In *Keller*, the Court stated that the factual record was not adequately developed to determine the appropriate remedy for violation of First Amendment rights by improper expenditure of compelled dues, and thus the issue has been left undecided to this day. Here, the factual record is sufficiently developed to allow the Court to rule on this issue.

The rulings in *Hudson* and *Keller* indicate that this Court believes the issue presented here to be important enough to justify a grant of review. Both cases acknowledge that the issue of whether advance notice and reduction of dues and general objections as opposed to specific objections are constitutionally required has yet to be decided. This case presents the Court with the opportunity to make such a decision. Thus, the Court should

grant review to settle an important question of federal constitutional law impacting a significant segment of the population.

CONCLUSION

The conflict presented by the decision of the Eleventh Circuit Court of Appeals is clear and unmistakable. The Eleventh Circuit has rejected the decisions of at least eight other United States Circuit Court of Appeals and two state Supreme Courts.

This Court has denied certiorari in a number of recent agency fee, *Hudson* follow-up cases. *Levine v. Heffernan*, 864 F.2d 457 (7th Cir. 1988) (holding Wisconsin's integrated bar does not violate First Amendment rights of association and speech); *Lowary v Lexington Local Board of Education*, 903 F.2d 422 (6th Cir.), *cert. denied*, 498 U.S. ___, 112 L. Ed. 2d 396 (1990), *Gwirtz v. Ohio Education Association*, 887 F.2d 678 (6th Cir. 1989), *cert. denied*, 494 U.S. ___, 108 L. Ed. 2d 941 (1990), *Gilpin v. American Federation of State, County, and Municipal Employees, AFL-CIO*, 875 F.2d 1310 (7th Cir.), *cert denied*, 493 U.S. ___, 107 L. Ed. 2d 258 (1989). In the instant case, this Court will find a fully developed record of procedures alleged to comply with the *Hudson* requirements. The result of a decision on the merits of this case will have far-reaching consequences. *Lathrop v. Donahue*, 367 U.S. 820 (1961), was the only Supreme Court case addressing the integrated bar area until *Keller v. State Bar* last term. *Keller* specifically left open the question of the proper procedures necessary to protect constitutional

rights. The facts here present an excellent opportunity for the Court to finish the analysis begun in *Keller*.

Review by this Court is necessary to resolve the conflict created by the Eleventh Circuit Court of Appeals' decision in this case. Review is also necessary so that this Court can finally resolve the important question of law left unanswered in *Keller*. Amicus Curiae respectfully urges this Court to grant the petition for writ of certiorari and reverse the judgment of the Eleventh Circuit Court of Appeals.

DATED: February, 1991.

Respectfully submitted,

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